

BEFORE THE NEBRASKA PUBLIC SERVICE COMMISSION

Judith E. Timms,)	FORMAL COMPLAINT NO. 1323
Complainant,)	
)	
vs.)	
)	ORDER
Apartment Movers of Omaha,)	
)	
Defendant.)	ENTERED: JANUARY 30, 2007

APPEARANCES:

For Apartment Movers of Omaha:	Commission Staff:
Michael O'Brien	Mark Breiner
3717 Harney Street	1200 N Street
Omaha, NE 68131	Suite 300, The Atrium
	Lincoln, NE 68508

BY THE COMMISSION:

This matter came before the Commission upon the filing of a formal complaint against Apartment Movers of Omaha, filed on December 22, 2005. Notice of this hearing was sent to all parties of record on May 17, 2006, and a hearing was held on the matter on June 8, 2006

Ms. Judith Timms testified on her own behalf. Ms. Timms was the complainant in this matter. She testified to the Commission that she had contacted Douglas Oestergaard of Apartment Movers of Omaha for a move to be conducted on June 26, 2004. She was informed that the move of a two bedroom apartment would cost around \$500 based upon time. She entered into a contract with Apartment Movers of Omaha to do the move on June 26. She requested that \$5,000 dollars of insurance be added to the cost of the move.

Ms. Timms stated to the Commission that the move did take place on June 26, but that it took a long time as only one person was loading the truck while two people were inside the truck arranging the boxes and furniture as it was being brought out. After the truck was loaded, Ms. Timms was informed that the crew would stop for a soda and meet up with her at her house.

The crew arrived at her house one to one and one-half hours later and began to unload the truck. After they were finished, Ms. Timms looked in the back of the truck and saw that it was empty. She did not start unloading any boxes until the next day. She at that time discovered that a box was missing. It was a box that contained several pieces of jewelry that Ms. Timms valued at between \$25 and \$200 dollars per piece. She stated that she immediately called Mr. Oestergaard and notified him of the missing box. He asked if she had checked the back of the truck, which she had, and then told her she possibly mislaid the box and should continue to look for it.

Ms. Timms did take additional steps to locate the box, but after two days of searching she was not able to find that box and discovered that another box, loaded in the bottom of a bigger box and containing her mothers sterling silverware was also missing. She wrote Mr. Oestergaard a letter stating her unhappiness with the situation. She reported the incident to the police, who informed Ms. Timms that they had talked with Mr. Oestergaard and that he would reimburse her for the lost items through insurance. At that time Ms. Timms stated she believed that the matter would be resolved.

Ms. Timms stated that the police had checked pawn shops but that nothing like the items in question had been found. They recommended that she file in small claims court. She also stated that she was charged an additional \$250 due to the long duration of the move, and that she felt that the move took so long because the crew was going through her boxes and not moving the goods.

Ms. Timms was cross-examined by counsel for Apartment Movers of Omaha, Mr. O'Brien. Ms. Timms stated that she had supervised the packing of the boxes by her son, and that the boxes were loaded onto the moving vehicle. She said that she had opened every box that she received from Apartment Movers, but that one box was not found and that the other box was missing silverware. She stated she did not specifically report the missing items to Apartment Movers as she did not believe that each piece had a value greater than about \$200 and thus were not of extraordinary value. She stated that the Omaha Police Department did not

find any items matching her missing items in Omaha area pawn shops.

Apartment Movers of Omaha called two witnesses. The first was Steve Hendrickson. Mr. Hendrickson is a five year employee of Apartment Movers of Omaha and was the foreman on the Timms move. He stated that he supervised the other tow workers, Steve and Wendy, and that he did not observe either of them going through boxes or untaping any boxes. He stated that the move took longer than quoted due to the disorganized state of the boxes as they found them packed by Ms. Timms and that there were considerably more boxes than they had anticipated.

Mr. Hendrickson informed the Commission that they did stop for dinner for about an hour but that they did not charge Ms. Timms for that time. He reported that stated he had examined the back of the truck and did not see any boxes left over. He further told the Commission that Ms. Timms did not complain to her about any missing boxes at the time of the move or later.

Mr. Hendrickson stated that Apartment Movers has a policy against stealing on moves. On examination by Commission Landis, he stated that he was not aware of any other moves during his period of employment with Apartment Movers where there were any allegations of theft.

On examination by Commissioner Boyle, Mr. Hendrickson denied that he told Ms. Timms that Wendy was being trained or that she did not do the amount of work that would be expected. He also stated that the crew size was appropriate for a move of this size.

The second witness called by Apartment Movers was Sam Distephano, a retired Omaha police officer. He stated that the report filed by Ms. Timms was a felony theft report, and that it was his belief that the report would have been followed up by a detective and that the fact that no warrants were issued indicated that no grounds were found to

Upon examination by Commission staff, Mr. Disephano did review a supplemental report that indicated that an investigator did meet with Mr. Oestergaard on August 27,

2006. The investigator was informed that Ms. Timms did take out "insurance". The Omaha Police Department considered the file as "Restitution Made- Victim does not wish to pursue the investigation" due to the "insurance claim".

O P I N I O N A N D F I N D I N G S

The Commission is concerned about two factors in this matter. One is that Apartment Movers of Omaha gave an estimate for the move of \$500 with the final bill being around \$750. This is a discrepancy of fifty percent, and could potentially have a materially negative impact on the consumer as the expectation of a \$500 move becomes in reality a bill for substantially more.

The other matter that is of concern to the Commission is that statements made by Mr. Oestergaard to the Omaha Police Department regarding insurance. Ms. Timms took out the additional value policy, and according to exhibit evidence before the Commission, Mr. Oestergaard stated to the Omaha Police Department investigator that Ms. Timms would be compensated through insurance. After that statement, Mr. Oestergaard then did not follow up with any compensation. No evidence was presented that a claim was denied or even made on Ms. Timms behalf for compensation for her alleged losses to any insurance company.

The Commission, when it first issues a certificate, only does so after finding that the proposed holder is a fit, willing and able person or entity to offer the service. This standard of fitness is in place throughout the existence of the certificate. It is a continuing obligation of the authority holder to operate and conduct its business in a manner that is fit.

While the tariff does offer some protection to movers from claims on items of extraordinary value including items such as jewelry, it does not offer protection for some actions taken by the certificate holder. In this case, the Commission cannot condone a statement made to legal authorities that insurance will compensate a shipper for

losses when, in fact, the certificate holder was telling the shipper that the items in question were exempt and that they would make no payment whatsoever to her for the allegedly lost items.

The Commission finds that the statements made to the Omaha Police Department represent activity and statements that are not fit. The statement was made to a legal official that the defendant either knew or should have known was not factually correct.

Upon review of the record, the Commission finds that clear and convincing evidence supports the finding that defendant in this matter conducted his operations in an unfit manner in this instance. In determining a civil assessment, the Commission must weigh the severity and gravity of the offense. Upon consideration of these factors, the Commission finds Defendant should be assessed a fine in the amount of Five Hundred dollars (\$500.00).

O R D E R

IT IS, THEREFORE, ORDERED by the Nebraska Public Service Commission that Formal Complaint No. 1323 filed against S & B Enterprises dba Apartment Movers of Omaha, Omaha, Nebraska, be, and it is hereby, sustained.

IT IS FINALLY ORDERED that S & B Enterprises dba Apartment Movers of Omaha, be, and is hereby assessed a civil penalty in the amount of Five Hundred dollars (\$500.00) for actions and statements that are not fit.

MADE AND ENTERED at Lincoln, Nebraska, this 30th day of January, 2007.

NEBRASKA PUBLIC SERVICE COMMISSION

COMMISSIONERS CONCURRING:

Chairman

ATTEST:

Executive Director

